

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PAUL MILLER and CAROL MILLER,

Plaintiff,

-against-

GENERAL MOTORS, LLC,

Defendant.

**Civil Action No.:**

**NOTICE OF AND PETITION FOR REMOVAL**

**TO THE HONORABLE CHIEF JUDGE AND JUDGES OF THE UNITED STATES  
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK**

Defendant GENERAL MOTORS LLC i/s/h/a General Motors, LLC (“New GM”) hereby files this Petition for Removal of this action from the Supreme Court of New York, New York County, Index No. 159912/15, to the United States District Court for the Southern District of New York, pursuant to 28 U.S.C. § 1441 and, in support thereof, avers as follows:

**Procedural History**

1. The action was commenced with the Clerk of New York County on September 28, 2015 (the “State Court Action”). A true and correct copy of the Summons and Complaint attached hereto as **Exhibit A**.

2. The Summons and Complaint were served on New GM via Corporation Service Company on November 5, 2015.

3. No further proceedings have been had in the Supreme Court of New York, New York County, in connection with the above-captioned action.

**Diversity of Citizenship Exists**

4. This Court has original jurisdiction over the above-entitled action pursuant to 28 U.S.C. § 1332 given that the Plaintiff and New GM are citizens of different states, and the action may, therefore, be removed to this Court pursuant to 28 U.S.C. §1441(b).

5. Plaintiffs Paul Miller and Carol Miller are citizens of the State of Florida residing in Delray Beach, Palm Beach County. *See* Compl. ¶¶ 2-3, Ex. A.

6. New GM is a limited liability corporation organized and existing under the laws of the State of Delaware, with its principal place of business located in Detroit, Michigan.

7. The citizenship of a limited liability corporation is determined by reference to the citizenship of each of its members. *See Handelsman v. Bedford Village Associates Ltd. Partnership*, 213 F. 3d 48 (2d Cir. 2000).

8. The sole member of New GM is General Motors Holdings LLC. General Motors Holdings LLC is a limited liability corporation organized under the laws of the State of Delaware. The sole member of General Motors Holdings LLC is General Motors Company. General Motors Company is a corporation organized under the laws of the State of Delaware, with its principal place of business located in Detroit, Michigan.

9. New GM is a citizen of the States of Delaware and Michigan.

10. Accordingly, there is complete diversity of citizenship of the parties.

11. Venue is also proper, as the State Court Action is pending in this District.

**The Amount in Controversy Exceeds \$75,000.00**

12. Although plaintiffs did not specifically plead an amount in controversy in the Complaint (in compliance with C.P.L.R. § 3017(c)), this action can be removed because there is a “reasonable probability” that the amount in controversy exceeds the jurisdictional limits of this court. *See Scherer v. Equitable Life Assurance Soc’y of U.S.*, 347 F. 3d 394, 397 (2d Cir. 2003).

13. This is a product liability action alleging that Plaintiff was seriously injured when the driver side air bag of his 2011 Buick Enclave (the “Enclave”) did not deploy after the Enclave was “[s]ideswiped by a tractor trailer....” *See* Compl. ¶¶ 17-18, Ex. A. Plaintiffs alleged “injuries of an extremely serious and permanent nature” (*see* Compl. ¶ 20, Ex. A) and:

[s]erious, severe, and permanent injuries to his head, limbs and body, still suffers and will continue to suffer for some time, great physical and mental pain and serious bodily injury; became sick, sore, lame and disabled and so remained for a considerable length of time, continuing to date.

*See id.* ¶ 43.

14. There is a reasonable probability those claimed injuries exceed 28 U.S.C. § 1332(a)’s \$75,000 threshold.

#### **Removal is Timely**

15. The Notice of Removal has been filed within 30 days of New GM receiving the Summons and Complaint.

#### **Compliance with 28 U.S.C. § 1446**

16. A true and correct copy of the written notice required by 28 U.S.C. § 1446(d), annexed hereto as **Exhibit B**, will be filed in the State Court Action and served on Plaintiff after the filing of this Petition for Removal in this Court.

17. By filing this Notice of Removal, New GM has not and does not waive any defenses it might assert or its right to bring any application in relation to this litigation or its subject matter.

**WHEREFORE**, defendant New GM prays for removal of the above-captioned action from the Supreme Court of New York, New York County, to the United States District Court for the Southern District of New York.

Dated: White Plains, New York  
December 4, 2015

Respectfully Submitted,

/s/ Steven R. Kramer

Steven R. Kramer, Esq.

ECKERT SEAMANS CHERIN & MELLOTT, LLC

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